

In the Court of Appeals of the State of Alaska

Andrew Alexander Malone,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13658**

Order

Date of Order: **April 28, 2020**

Trial Court Case No. **3KN-20-00288CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Andrew Malone appeals from the district court’s April 2, 2020 order holding him without bail until the completion of a competency evaluation. Malone argues that the “no bail” order violates the Article I, Section 11 of the Alaska Constitution. This section of our state constitution guarantees that, “in all criminal prosecutions,” the accused “is entitled . . . to be released on bail, except for capital offenses when the proof is evident or the presumption great[.]”

The State acknowledges that Malone is entitled to pre-trial bail, but suggests that, while the discussion at the April 2 hearing was unclear, the district court did set bail at that hearing.

As we recognized in *Hamburg v. State*, Article I, Section 11 of the Alaska Constitution — together with Article I, Section 12 of the constitution, which prohibits excessive bail — “guarantees that the court must set reasonable conditions of bail release for a defendant who has not yet been convicted.”¹ We have listened to the bail hearing,

¹ *Hamburg v. State*, 434 P.3d 1165, 1165 (Alaska App. 2018) (citing *Martin v. State*, 517 P.2d 1389, 1393-95 (Alaska 1974)).

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and we agree with Malone that the court ordered Malone to be held without bail pending a competency evaluation (with bail to revert to a third-party custodian following the competency evaluation).

We therefore REVERSE the order denying bail pending the competency evaluation, and we REMAND this case to the district court with directions to set bail for Malone.

We do not retain jurisdiction.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Court of Appeals Judge
Judge Fallon
Magistrate Judge Browning
Trial Court Clerk

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